

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

**Nationstar Mortgage LLC d/b/a Mr.
Cooper**

Plaintiff

vs.

Donna M. Thomas and David W. Thomas

Defendants

Internal Revenue Service

Party-In-Interest

CIVIL ACTION NO: 2:19-cv-00361-JDL

**PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AS TO DAVID W. THOMAS**

**RE:
63 Goodwin Road, Eliot, ME 03903**

**Mortgage:
August 22, 2007
Book 15243, Page 504**

NOW COMES the Plaintiff, Nationstar Mortgage LLC d/b/a Mr. Cooper (hereinafter “Nationstar”), pursuant to Fed.R.Civ. P.55(b), and hereby moves for Default Judgment, following service, as to Defendant, David W. Thomas, since said Defendant has neither answered nor otherwise appeared in this matter. As grounds therefore, and as further detailed in the accompanying Memorandum in Support of Plaintiff’s Motion for Default Judgment, Plaintiff states the following:

1. Plaintiff’s Complaint was filed on August 8, 2019. Affidavit of Michelle Dole in Support of Motion for Default Judgment, *Id.*, ¶ 2.
2. Proof of Service for Defendant was filed on August 16, 2019. *Id.*, ¶ 3.
3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), Defendant's response to the Complaint was due August 30, 2019. *Id.*, ¶ 4.
4. The Defendant is not in the military. *Id.*, ¶ 5.
5. On October 4, 2019, Plaintiff filed a Request for Entry of Default as to Defendant. *Id.*, ¶ 6.
6. On October 4, 2019, this Court entered Default as to Defendant. *Id.*, ¶ 7.

7. Entry of default judgment against Defendant pursuant to Fed. R. Civ. P 55(b) is proper because Defendant has failed to plead or otherwise defend.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter default judgment as to Defendant. Plaintiff is also hereby requesting a hearing on the assessment of damages to determine the order of priority and related matters. In the interest of justice Plaintiff requests that the hearing on damages be consolidated with a trial on the merits as to the answering defendants.

DATED: February 13, 2020

/s/Reneau J. Longoria, Esq.
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MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

This is an action of Foreclosure, Breach of Note, Breach of Contract, Money Had and Received, Quantum Meruit, and Unjust Enrichment where Plaintiff is moving for Entry of Default Judgment pursuant to Fed. R. Civ. P. 55(b), as to Defendant, David W. Thomas, since said Defendant has neither answered nor otherwise appeared in this matter. In the interests of judicial economy, this Court should grant entry of default judgment as to the aforesaid Defendant and schedule a hearing on the assessment of damages to determine the order of priority and related matters.

As grounds therefore, Plaintiff states the following:

1. Entry of default and default judgment against Defendant, pursuant to Fed. R. Civ. P. 55(b), is proper because said Defendant has failed to plead or otherwise defend.

Pursuant to Fed. R. Civ. P. 55(a), it is within the discretion of the trial court to enter default against a Defendant who “has failed to plead or otherwise defend.” *See Schmir v. Prudential Ins. Co. of America*, 220 F.R.D. 4 (1st Cir. 2004) and *Dekom v. New York*, 2013 WL 3095010 (June 18, 2013).

Furthermore, “if that failure is shown by an Affidavit, the Clerk must enter the Defendant’s default.” *See Fed.R.Civ.P. 55(a)*. Plaintiff’s Complaint was filed on August 8, 2019; As of this date, Defendant

has neither answered nor otherwise appeared in this matter. *See Affidavit of Michelle Dole attached hereto.* In response to Plaintiff's Request for Entry of Default dated October 4, 2019, this Court entered default as to Defendant on October 4, 2019.

Plaintiff is now applying for Default Judgment and is hereby requesting a hearing pursuant to Fed. R. Civ. P 55(b)(2) on the assessment of damages to determine the order of priority and related matters, pursuant to Fed. R. Civ. P 55(b)(2). According to said Rule:

"the court may conduct hearings or make referrals-preserving any federal statutory right to a jury trial-when, to enter or effectuate judgment, its needs to (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter"

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter default judgment as to Defendant, David W. Thomas, and schedule a hearing on the assessment of damages to determine the order of priority and related matters.

DATED: February 13, 2020

/s/Reneau J. Longoria, Esq.
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CERTIFICATE OF SERVICE

I, Reneau J. Longoria, Esq. hereby certify that on February 13, 2020 I served a copy of the above document by electronic notification using the CM/ECF system and/or First Class Mail to the following:

/s/Reneau J. Longoria, Esq.
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Internal Revenue Service
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